

May 12, 2011

CLERK, U.S. BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

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Attorneys for Plaintiff/Debtor
 JAMES L. MACKLIN

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

In re) **CASE NO. 2010-44610**

JAMES L. MACKLIN,) **DCN: HSB-002**

Debtor,)

_____) **ADV. NO. 11-02024-E**

JAMES L. MACKLIN,)

Plaintiff,)

-vs.-)

DEUTSCHE BANK NATIONAL TRUST CO.,) **Date: June 9, 2011**
 AS INDENTURE TRUSTEE FOR THE) **Time: 1:30 p.m.**
 ACCREDITED MORTGAGE LOAN TRUST) **Place: 501 I Street, 6th Floor, Courtroom 33**
 2006-2 ASSET-BACKED NOTES; and all) **Sacramento, California**
 persons claiming by, through, or under such)
 person, all persons unknown, claiming any legal)
 or equitable right, title, estate, lien, or interest in)
 the property described in the complaint adverse)
 to Debtor's title thereto; and)
 CORRESPONDENT DOES 1-10, Inclusive,)

_____) **Defendant.**

**MOTION TO COMPEL CHAPTER 7 TRUSTEE TO ABANDON PROPERTY OF THE
 ESTATE**

**TO THE HONORABLE RONALD H. SARGIS, CHAPTER 7 TRUSTEE THOMAS A.
 ACEITUNO, AND ALL OTHER INTERESTED PARTIES:**

Plaintiff/Debtor, James L. Macklin, hereby moves this court for an order granting a motion

1 to compel the Chapter 7 Trustee to abandon property of the estate on the following grounds:

2 1. Plaintiff/Debtor is an individual, and Debtor of the within captioned bankruptcy
3 case, having converted to a voluntary petition for relief under Chapter 7 of the Bankruptcy
4 Code on October 5, 2010 (“the Bankruptcy Case”).

5 2. Plaintiff/Debtor is the owner of the property at 10040 Wise Road, Auburn,
6 California, 95603 (“the Subject Property”).

7 3. On Schedule B of Debtor’s Bankruptcy Petition, Debtor listed his lawsuit against
8 Defendants. Plaintiff/Debtor filed his Adversary Complaint against Defendants on January 13,
9 2011 to quiet title and for damages on the Subject Property.

10 4. Counsel for Plaintiff/Debtor, Holly S. Burgess, contacted the Trustee to determine his
11 intentions with respect to the abandonment of the subject property and Plaintiff/Debtor’s
12 adversary complaint. Mr. Aceituno has stated that he will abandon the subject property and will
13 file his non-opposition to this motion. See, declaration of Holly Burgess, filed concurrently with
14 the motion.

15 5. Pursuant to 11 U.S.C. §554 and Bankruptcy Rule 6007, after notice and hearing, the
16 court may order the Trustee to abandon property of the Estate that is burdensome to the Estate or
17 of inconsequential value and benefit to the Estate. 11 U.S.C. § 554(b). Here, the property is
18 impaired by the Defendant’s trustee’s deed upon sale possessed by Deutsche. The alleged secured
19 interest of Deutsche was \$659,000.00. See, Debtor’s Schedule A. Plaintiff/Debtor estimates the
20 property is worth \$300,000 in today’s market. See, declaration of Holly Burgess, filed
21 concurrently herewith. There is no equity in the property. Property in which the Estate has no
22 equity is of inconsequential value and benefit. *Cf. Vu v. Kendall (In re Vu)*, 245 B.R. 644 (B.A.P.
23 9th Cir. 2000).

24 6. Since the debt secured by the property exceeds the value of the property, and the
25 potential negative financial consequences of the Estate retaining the assets, the court should

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1 determines that the asset is of inconsequential value and benefit to the Estate, and order the
2 Trustee to abandon the property.

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4 Dated: May 9, 2011

LAW OFFICES OF HOLLY S. BURGESS

5 By: /s/ Holly S. Burgess

6 HOLLY S. BURGESS

7 Attorneys for Plaintiff/Debtor
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